

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 14-13254-scc

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6 In the Matter of:

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8 199 EAST 7TH STREET, LLC,

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10 Debtor.

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12 - - - - - x

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14 United States Bankruptcy Court

15 One Bowling Green

16 New York, New York

17

18 April 9, 2015

19 10:13 a.m.

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23 B E F O R E :

24 HON SHELLEY C. CHAPMAN

25 U.S. BANKRUPTCY JUDGE

1 Doc. #21 Motion for Sale of Property under Section 363(b)

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25 Transcribed by: Sherri L. Breach, CERT\*D-397

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14 BY: SCOTT S. MARKOWITZ, ESQ.

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1 P R O C E E D I N G S

2 MR. CARLEBACH: Good morning, Your Honor.

3 THE COURT: Good morning, Mr. Carlebach. How are  
4 you?

5 MR. CARLEBACH: I am good.

6 THE COURT: All right. So --

7 MR. CARLEBACH: So we -- we're here on a sales  
8 procedures application and --

9 THE COURT: Right.

10 MR. CARLEBACH: -- the sales procedures  
11 application and every aspect of it was very heavily  
12 negotiated.

13 THE COURT: Could you just -- it's a lot of paper.  
14 And --

15 MR. CARLEBACH: Let me --

16 THE COURT: -- it's still not --

17 MR. CARLEBACH: Let me --

18 THE COURT: -- it's still not clear to me exactly  
19 what's happening.

20 MR. CARLEBACH: We have a stalking horse contract  
21 of a million dollars --

22 THE COURT: Okay.

23 MR. CARLEBACH: -- which, not to digress, but it's  
24 going to -- that stalking horse contract actually as of  
25 yesterday is going to go up to a million-two, but we'll --

1 it -- as in --

2 THE COURT: Okay. Well, that's kind of like a big  
3 digression.

4 MR. CARLEBACH: Okay. Yeah. Let's --

5 THE COURT: So --

6 MR. CARLEBACH: -- not digress. Let's --

7 THE COURT: No. No. No. I need to understand  
8 exactly --

9 MR. CARLEBACH: No. They --

10 THE COURT: -- what we're doing.

11 MR. CARLEBACH: Yeah. Yeah. No. So I'll come  
12 back to that.

13 THE COURT: Okay.

14 MR. CARLEBACH: It's the same purchaser. There's  
15 an event which made the price go up which we're just  
16 papering over now.

17 It's a million-dollar contract. There's a \$50,000  
18 breakup fee. Basically, these are five apartments that are  
19 rent-stabilized and he's essentially paying \$200,000 per  
20 unit. Because they're rent-stabilized it's an investment  
21 where, you know, one of these -- if the apartments become  
22 vacant the value goes up --

23 THE COURT: Of course.

24 MR. CARLEBACH: -- exponentially. So -- and it's  
25 going to be a really standard bankruptcy sale and, you know

1 --

2 THE COURT: Does the co-op -- I'm just trying to  
3 figure out who is -- besides the debtor who has the interest  
4 here. Does the co-op have a --

5 MR. MARKOWITZ: The co-op corporation --

6 THE COURT: -- secured claim?

7 MR. MARKOWITZ: It's -- Judge, it's maintenance on  
8 the proprietary lease. We deem it to be rent has to be  
9 cured under 365 when we assume and assign the proprietary  
10 lease to --

11 THE COURT: Okay.

12 MR. MARKOWITZ: -- the buyer. We can talk about  
13 that in a second because that's the one little issue that we  
14 have. But, yeah, it's relatively --

15 THE COURT: But there's no dispute about that,  
16 right?

17 MR. CARLEBACH: There is no dispute about --

18 THE COURT: I mean, other than I -- perhaps the  
19 amount.

20 MR. CARLEBACH: -- that.

21 THE COURT: Correct.

22 MR. MARKOWITZ: But they want to challenge the  
23 amount and the State Supreme Court already ruled twice on  
24 the amount. So I tried to explain to them they can't do  
25 that.

1 THE COURT: Okay.

2 MR. CARLEBACH: We -- this is the conversation we  
3 had from the day we walked in. And, you know, this language  
4 in the proposed sale order, which is an exhibit to the sale  
5 procedures application, was very heavily negotiated. And,  
6 you know, what you're hearing is still the -- and what I  
7 said to Mr. Markowitz --

8 THE COURT: Well, I really --

9 MR. CARLEBACH: -- what I said to Mr. --

10 THE COURT: But I don't understand that. You --  
11 in other words, the heavily negotiated is between the debtor  
12 and the purchaser, right? But you -- is that what you mean  
13 by heavily negotiated?

14 MR. CARLEBACH: No. I mean -- I'm just saying  
15 that this language -- this -- within -- in the sale order it  
16 talks about the disposition of the sale proceeds.

17 THE COURT: Okay.

18 MR. CARLEBACH: So of course what they want is to  
19 -- you know, the cure amount, for lack of -- you know, in  
20 this case it's actually the cure amount should be paid  
21 immediately. Upon the closing of the sale there will be an  
22 immediate payment. And we're just saying as -- you know,  
23 it's a claim. To the extent that -- you know, and they're  
24 saying, well, we have a judgment. What could you -- to the  
25 extent it's an allowed claim it's going to be paid.

1 THE COURT: Right.

2 MR. CARLEBACH: If there's a good faith dispute,  
3 that's the language, if there's an objection to claim, it  
4 will be escrowed.

5 THE COURT: Okay. But I get to decide.

6 MR. CARLEBACH: Absolutely.

7 THE COURT: I don't understand what -- I don't  
8 understand the heavily negotiated part of it. That's what I  
9 was not -- I mean, it's got nothing to do with the  
10 purchaser. The purchaser is going to pay. The debtor's  
11 going to take the money. Then what the debtor does next  
12 with the money, right, I mean, in the absence of there being  
13 -- so there's got to be an assumption and a cure, and if  
14 there's a dispute over the cure amount I have to figure it  
15 out, right?

16 MR. CARLEBACH: If that's what -- that -- you have  
17 no dispute from me. That's exactly what the --

18 THE COURT: Okay. So I don't think I have a  
19 dispute from Mr. Markowitz other than he said --

20 MR. MARKOWITZ: No.

21 THE COURT: -- he's right and you're wrong. So --

22 MR. MARKOWITZ: There's no dispute other than I  
23 don't think that Your Honor -- and maybe I'm wrong about  
24 this. When the State Supreme Court ruled twice how much the  
25 unpaid maintenance is as of a certain date, that you're not



1 going to start reviewing all these papers over again --

2 THE COURT: Look, we --

3 MR. MARKOWITZ: -- and counting numbers.

4 THE COURT: Rooker Feldman (ph) applies.

5 MR. MARKOWITZ: Right.

6 THE COURT: So I find it hard to imagine what the  
7 argument would be. But it's not before me yet.

8 MR. MARKOWITZ: Right. And --

9 THE COURT: So I can't say anything --

10 MR. MARKOWITZ: And I think to his point, and I  
11 just want to clarify this. When he said heavily negotiated,  
12 they sent over the sale papers, the draft motion as Your  
13 Honor said to do. I cleaned them up a bit. They're in  
14 decent shape, I think. And then he said -- I don't look  
15 focused --

16 THE COURT: Mr. Carlebach, let's --

17 MR. MARKOWITZ: I don't focus on the sale approval  
18 order in a bid procedures hearing. It's not the critical  
19 document until --

20 THE COURT: Correct.

21 MR. MARKOWITZ: -- the sale happens.

22 THE COURT: Absolutely.

23 MR. MARKOWITZ: So he's trying to say I negotiated  
24 certain -- he's submitting a draft -- a proposed --

25 THE COURT: Correct.

1 MR. MARKOWITZ: -- sale order and that's a  
2 proposed sale order.

3 THE COURT: That's right.

4 MR. MARKOWITZ: That's all it is.

5 THE COURT: Okay. You're in --

6 MR. MARKOWITZ: And we'll deal with it --

7 THE COURT: You're in wild --

8 MR. MARKOWITZ: -- at the sale.

9 THE COURT: -- in wild agreement.

10 MR. CARLEBACH: I'll go one step further, Judge.

11 Not only did Mr. Markowitz comment on it, his partner, Mr.  
12 Wolfe, also had his own independent set of comments to every  
13 exhibit. And it's fine, though. I said -- if -- I agree  
14 with Mr. Markowitz. It's a proposed sale order.

15 THE COURT: Okay.

16 MR. CARLEBACH: When we get to auction --

17 THE COURT: Sure.

18 MR. CARLEBACH: -- we can --

19 THE COURT: But it --

20 MR. CARLEBACH: -- read this better.

21 THE COURT: But the only thing I care about today  
22 is that as between the debtor on the one hand and the  
23 purchaser on the other hand, that's not --

24 MR. CARLEBACH: Right.

25 THE COURT: -- that's not --

1 MR. CARLEBACH: The purchaser is comfortable that  
2 this is a sale order that will protect him.

3 THE COURT: Okay.

4 MR. CARLEBACH: And that was --

5 THE COURT: Who else -- who are the other  
6 creditors?

7 MR. CARLEBACH: I can look in the schedules.  
8 There weren't --

9 MR. MARKOWITZ: Judge, I believe there was about  
10 three creditors listed. There's a bar date past. My client  
11 filed a claim. I think one or two other tiny claims.  
12 There's no creditors here other than us.

13 THE COURT: Okay. So we're -- the debtor is  
14 extremely motivated to maximize the value.

15 MR. CARLEBACH: Absolutely.

16 MR. MARKOWITZ: And the debtor --

17 MR. CARLEBACH: Absolutely.

18 MR. MARKOWITZ: -- is extremely -- equity gets a  
19 decent amount of money here.

20 THE COURT: That's what --

21 MR. CARLEBACH: Right.

22 THE COURT: Right. That's --

23 MR. MARKOWITZ: Exactly.

24 THE COURT: -- the point.

25 MR. CARLEBACH: And in terms of the digression,

1 just there's one apartment that actually --

2 THE COURT: Let me state it differently --

3 MR. CARLEBACH: Yeah.

4 THE COURT: -- because I -- my lack of clarity  
5 with the bid procedures, you know, if we had secured debt,  
6 you know, stacked up like planes on a runway late in the  
7 afternoon I would probably give you more of a hard time.  
8 But given where we are, you know, you could almost do this  
9 as a private sale and, you know --

10 MR. CARLEBACH: If equity --

11 THE COURT: I would --

12 MR. CARLEBACH: If equity chose to go that route  
13 they could --

14 THE COURT: That's what I'm saying.

15 MR. CARLEBACH: -- they could that. Absolutely.

16 THE COURT: I'm just trying to explain that any  
17 lack of clarity that I have with this because of the  
18 configuration of the debt and the equity, I'm not going to  
19 drive you crazy.

20 MR. CARLEBACH: I appreciate that.

21 And all I -- what I was saying was is that the  
22 contract today, the stalking horse bid is for a million  
23 dollars. In the interim there was this one apartment where  
24 somebody died and they had a lover who was trying to claim  
25 succession rights, classical. And it just settled and that

1 apartment has now --

2 THE COURT: Only in New York.

3 MR. CARLEBACH: Only New York.

4 MR. MARKOWITZ: Only New York.

5 MR. CARLEBACH: And that apartment has now become  
6 vacant. And as a result of the vacancy, there was already a  
7 re-negotiation upwards of \$200,000 of the purchase price.  
8 And it's a bargain because the minute these apartments  
9 become vacant --

10 THE COURT: Sure.

11 MR. CARLEBACH: -- the value is way above the 200.  
12 So we're looking to get -- I already sent out an amendment  
13 to the contract -- modification --

14 THE COURT: Okay.

15 MR. CARLEBACH: -- of a million-two which we hope  
16 to -- you know, that's the only -- but it's the same  
17 purchaser. It's not a new stalking horse bidder. And it's  
18 just a --

19 THE COURT: Got it. Okay. The new --

20 MR. CARLEBACH: -- an upward -- yeah. Raising the  
21 ceiling which is only --

22 THE COURT: Okay.

23 MR. CARLEBACH: -- good.

24 THE COURT: Okay. And there are no issues with  
25 the gas lines at the building?

1 MR. CARLEBACH: No.

2 MR. MARKOWITZ: Pretty close.

3 MR. CARLEBACH: Yeah. This is --

4 THE COURT: I mean, it's right around the corner.

5 MR. CARLEBACH: Oh, well, we haven't heard of any.

6 Let's put it this way. I mean, it's very unfortunate.

7 THE COURT: Very tragic.

8 Okay. So what else do I need to do today?

9 Mr. Markowitz, that's your only issue?

10 MR. MARKOWITZ: Yeah. I just want to -- one  
11 thing. It's not a major issue, but, you know, to your point  
12 about the bid procedures and all that. Yes, this case is  
13 simple. It's about how much money equity can put in their  
14 pocket. I mean, we -- I don't care about the disclosure.  
15 But the tenant that's 4C or whatever, the illegal tenant is  
16 getting a buyout. The money -- the debtor doesn't have the  
17 money. I guess he's putting it in and that's fine. He's  
18 paying that person to get out. It's a meaningful amount of  
19 money. It increases the purchase price. This case is all  
20 about how much money will get paid to my client -- the co-op  
21 corporation has had a long dispute with him -- and how much  
22 money he's going to put in his pocket.

23 THE COURT: Right. So we want --

24 MR. MARKOWITZ: That's all this case is about.

25 THE COURT: -- we want to get you paid.

1 MR. MARKOWITZ: Absolutely.

2 THE COURT: And then -- and you can be done.

3 MR. MARKOWITZ: Right. Exactly.

4 THE COURT: But who is the -- there -- have I  
5 retained -- have you retained a broker? Is there a broker?

6 MR. CARLEBACH: There is none.

7 THE COURT: Okay. So don't the bid procedures  
8 refer to contacting the debtor's real estate broker?

9 MR. CARLEBACH: If it does say that, that's a  
10 mistake because we do not have a real estate broker. And  
11 I'll change that to make sure that it just refers to  
12 debtor's counsel.

13 THE COURT: Right. And there's not going to be  
14 any marketing. There's going to be a notice of a sale?

15 MR. CARLEBACH: Right. Just a notice of sale in  
16 The New York Times. I think we put in one ad in The New  
17 York Times and, you know --

18 THE COURT: Your client is telling you something  
19 else.

20 MR. CARLEBACH: Yeah. I mean, the debtor plans on  
21 marketing it himself and doing -- and I can say that just  
22 independently that, you know, today even with the whiff of a  
23 bankruptcy sale, it's just people -- people from Illinois  
24 start calling, you know, and saying, you know, I've got a  
25 great idea how you can dispose of these assets. So --

1 THE COURT: That's great.

2 MR. CARLEBACH: You know, that's --

3 THE COURT: But -- right. But to that, I mean,  
4 we're going to go. I mean, we're not going to have --  
5 entertain, you know, 50 people from Illinois who have ideas.  
6 We're going with this.

7 MR. CARLEBACH: Oh, yeah. No. This --

8 THE COURT: We're setting a date. If nothing  
9 better comes in, we're done.

10 MR. CARLEBACH: Yes.

11 MR. MARKOWITZ: Yes.

12 MR. CARLEBACH: That's it. That's --

13 THE COURT: Okay.

14 MR. CARLEBACH: There's no -- right. There's just  
15 -- we really just need to get a sale date. You know, I  
16 think we've proposed to have the sale in the courtroom here.

17 THE COURT: Okay. So you're going to be -- you're  
18 going to give me -- are we going to have a revised purchase  
19 agreement attached to an order or are you -- the problem is  
20 that you have a purchase agreement that is -- expires, I  
21 think -- well, it expires -- it expired yesterday, I think,  
22 because I think it said that a hearing doesn't take place  
23 until the 8th, plus you have a new amount.

24 So I'm just trying to make everything work because  
25 if I -- if I enter an order approving a stalking horse



1 contract that's outdated, that's not a good thing. So --

2 MR. CARLEBACH: We'll get an extension. We'll get  
3 an extension of this. Yeah.

4 THE COURT: Well, just -- you can just file an  
5 amended Exhibit A to the motion, notice of filing of amended  
6 Exhibit A, and then have the order refer back to that. That  
7 needs to be the order that things go in. I need to see the  
8 executed amended stalking horse agreement and then I'll  
9 enter the order approving that and the bid procedures.

10 MR. CARLEBACH: Understood.

11 THE COURT: Okay. And then we'll figure out the  
12 cure as and when we get there. But it seems to me that the  
13 State Court judgment carries a lot of weight.

14 MR. CARLEBACH: Understood.

15 THE COURT: Okay. All right. Anything else we  
16 need to do today?

17 Okay. We'll wait to hear from you and we'll enter  
18 the order as soon as we have everything in the right order.  
19 All right.

20 Thank you.

21 MR. CARLEBACH: Thank you.

22 THE COURT: Thank you for coming in today.

23 MR. MARKOWITZ: Thank you.

24 (Whereupon, these proceedings were concluded at 10:26  
25 a.m.)

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**I N D E X****RULINGS**

	<b>Page</b>	<b>Line</b>
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Section 363(b)	17	17

## C E R T I F I C A T I O N

I, Sherri L. Breach, certify that the foregoing transcript  
is a true and accurate record of the proceedings.

Sherri  
Breach

Digitally signed by Sherri Breach  
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AAERT Certified Electronic Reporter & Transcriber CERT\*D-397

DATE: September 1, 2015

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